IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7568 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

R G HARIYANI

Versus

G S R T CORPORATION

Appearance:

1. Special Civil Application No. 7568 of 1998

MR MUKESH H RATHOD for Petitioner No. 1

MRS VASAVDATTA BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 19/02/2004

ORAL JUDGEMENT

The petitioner has challenged the award of the Industrial Tribunal, Bhavnagar in reference [IT] No.125/93 dated 6th

December, 1997. In the said award, the Tribunal has set aside the order of reversion from the post of Traffic Inspector to the post of Assistant Traffic Inspector and instead, it has imposed the punishment of stoppage of three annual increments with permanent effect.

2. From the record of the petition, it appears that the petitioner, at the relevant time was discharging the duty as Traffic Inspector, at Dhari depot, was served with a chargesheet containing allegation that he was negligent in his duty and thereby respondent-Corporation was required to pay double overtime wages, resulting into considerable monetary loss. After complying with the requisite formalities, including grant of hearing, the departmental proceedings culminated into imposition of punishment of reversion from the post of Traffic Inspector to the post of Assistant Traffic Inspector vide order dated 15th March, 1991 passed by the Divisional Controller. The petitioner raised the dispute in respect of the same and ultimately, it came to be referred to the Tribunal by way of aforesaid reference.

3. In the statement of claim filed before the Tribunal, the petitioner contended that he was not negligent and the monetary loss that had been caused, was not on his account, but it was due to the negligence of others. It was also contended by him that no order of reversion to the post of Assistant Traffic Inspector could be passed, since he was recruited on the post of Traffic Inspector. The said claim was contested by the respondents by filing written statement at EXh.6, in which all the averments made by the petitioner were controverted. It has been contended by respondent that in the month of July, double duty over time was required to be paid solely because of the negligence of the petitioner. It was, therefore, prayed that the reference be dismissed.

4. Both the parties had led evidence before the Tribunal. The Tribunal on the strength of material that was produced before it, came to the conclusion that the order regarding reversion of the petitioner from the post of Traffic Inspector to the post of Assistant Traffic Inspector was not permissible in law and that was required to be set aside. It further came to the conclusion that looking to the nature of charge and the other surroundings circumstances, the end of justice would meet if the punishment of stoppage of three annual increments with permanent effect was passed. The Tribunal, therefore, quashed the order of reversion and replaced it with punishment of stoppage of three

increments with permanent effect.

5. The respondent-Corporation challenged the award of the Tribunal in this Court by filing the Special Civil Application No.8702/98. The learned Single Judge [Coram: N.N.Mathur, J], vide the order dated 18th December, 1998 dismissed the petition summarily holding that in view of the decision reported in AIR 1987, SC 1627, when the initial recruitment was on the post of Traffic Inspector, reversion to the post of Assistant Traffic Inspector could not be made.

6. The petitioner has now approached this Court challenging the award on the ground that even the imposition of punishment of three increments with permanent effect is very harsh looking to the nature of misconduct alleged against the petitioner. As against that, Ms.Vasavdutta Bhatt, learned advocate for the respondents has supported the judgment and has submitted that the Tribunal has considered all the material in detail and, thereafter, has imposed such punishment. Therefore. there is no reason for this Court to interfere with the award.

7. Mr.Rathod, learned advocate for the petitioner has submitted that Tribunal having quashed the punishment imposed by the disciplinary authority had no jurisdiction to substitute it with present punishment. The said submission cannot be accepted solely for the reason that initial order of Disciplinary Authority was against the settled legal position and, therefore, the Tribunal had set it aside. However, when the misconduct was adequately proved, the Tribunal could, while exercising power under section 11A of the Act, carry out the exercise to impose appropriate punishment and accordingly, after going through the record, it has come to the conclusion that punishment of stoppage of three annual increments with permanent effect is just and proper. When such exercise has been done, and on going through the record and in particular, the judgment of the Tribunal, if this court finds that the exercise has been in accordance with law, it will not be open for this Court to again appreciate the entire material with a view to find out whether the punishment imposed by the Tribunal was proper. In otherwords, when the Tribunal has already exercised jurisdiction under section 11A of the I D Act on the question of quantum of punishment, it will not be appropriate for this Court again to take this decision in judicial review and interfere with the same on the ground of it being harsh. It may not be forgotten that the act of negligence of the petitioner has resulted

into considerable monetary loss to the respondents. In my view, there is no case for interfering with the quantum of punishment imposed by the Tribunal. It is just and proper and it cannot be altered. In the result, this petition has no merits and it is ordered to be dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

[AKSHAY H.MEHTA, J]

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